S & L Vitamins, Inc. v. Australian Gold, Inc. Doc. 70

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Hon. Michael L. Orenstein
United States District Court
Eastern District of New York
Long Island Courthouse
100 Federal Plaza
Central Islip, NY 11722-4438

Re: S&L Vitamins, Inc. v. Australian Gold, Inc.
Cause No. 2:05-CV-1217 (JS) (MLO)

Dear Magistrate Judge Orenstein:

We represent Australian Gold, Inc. in the above-captioned matter. This letter is in response to a letter sent by Ronald Coleman on behalf of Plaintiff S&L Vitamins on April 4, 2006.

S&L Vitamins objected to a Subpoena that we sent to its accountant, Andrew P. Daniels, seeking financial records of S&L Vitamins and its principals. The Subpoena was required, in part, because in depositions, neither Steven Mercadente nor Larry Sagarin could answer all questions relevant to S&L Vitamins' financial condition. In particular, an income statement purportedly prepared by Mr. Daniels indicated that a distribution in the amount of $171,067.94 was made some time in 2005. Both Mr. Mercadente and Mr. Sagarin denied receiving any such distribution. Likewise, Laura Fanning, Mr. Sagarin's wife and the other shareholder in S&L Vitamins, denied receiving any distributions at any time from the company.

Prior to the expiration of the discovery cutoff, we informed S&L Vitamins' counsel that we intended to serve a Subpoena on S&L Vitamins' accountant to obtain the business records. At no time did counsel object to the Subpoena. The Subpoena was properly served prior to the expiration of discovery. Australian Gold could have insisted on a response by March 31, 2006, but instead asked that the documents be produced within two (2) weeks. Its intent was not to circumvent a discovery order but rather to obtain documents which Plaintiff testified were in the hands of its accountant.

The basis of S&L Vitamins' objection is because it claims that much of the discovery was burdensome or overly broad. As this Court has stated to the parties concerning other Subpoenas to third parties, S&L Vitamins does not have standing to

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object. Instead, that objection rests with the third party. In this case, Mr. Daniels did not object to the scope of the Subpoena but promptly provided Australian Gold's counsel with the requested information. His production of documents renders any complaints lodged by Plaintiff moot.

If the Court has any questions concerning this matter, we are available at the Court's convenience.

Respectfully submitted,

ICE MILLER LLP

Scott D. Matthews

SDM/tag
cc: Francis J. Earley
Ronald D. Coleman

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